

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

May 8, 2009

Allison Cook
Stoel Rives, LLP
980 Ninth Street, Ste. 1900
Sacramento CA 95814

DOCKET	
07-AFC-6	
DATE	MAY 08 2009
RECD.	MAY 08 2009

RE: **Application for Confidentiality, Emission Reduction Credits
Carlsbad Energy Center Project
Docket No. 07-AFC-6**

Dear Ms Cook:

On April 9, 2008, Carlsbad Energy Center LLC ("Applicant") filed an application for confidentiality with the California Energy Commission ("Commission") in the above-captioned Docket. Applicant seeks confidentiality for information related to Applicant's strategy and plans to secure Emission Reduction Credits ("ERCs") for the Carlsbad Energy Center Project. Applicant requests that the information be kept confidential in perpetuity.

A properly filed application for confidentiality shall be granted under the California Code of Regulations, title 20, § 2505(a)(3)(A), "if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [Energy] Commission to keep the record confidential."

Applicant bases its request upon two claims. First, Applicant cites to the Public Records Act, Govt. Code § 6255, the catch-all exemption, which allows an agency seeking to withhold disclosing any record to do so if the public interest in withholding the record clearly outweighs the public interest in disclosing the record. Government Code Section 6255 states that the determination of the public interest in each case should be based on the facts of that case.

The only argument Applicant makes to support its assertion that the public interest weighs more heavily in withholding, rather than disclosing Applicant's ERC strategy, is:

... due to the competitive nature of the market. The release of such information could hinder the process by which companies negotiate within the ERC market.

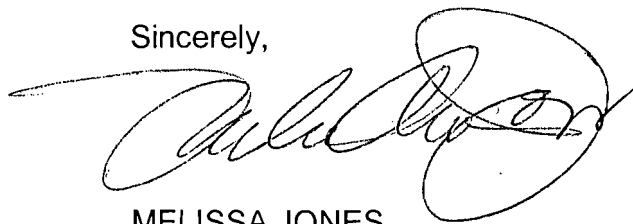
Applicant does not supply sufficient facts to demonstrate that in this instance the public interest is best served by designating this information as confidential. The Legislature, in enacting the Public Records Act, stated that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in California. Govt. Code § 6250. In light of this strong presumption that the public interest is in disclosure of records, Applicant has not met its burden of proof in demonstrating that this presumption should not apply in this case. Therefore, in the

absence of such proof against the presumption, the Commission cannot deem the record confidential.

Applicant's second claim is that Applicant is "bound by contract to maintain the confidentiality of the Submitted Information. . ." However, Applicant does not cite or discuss any law which would authorize the Commission to keep records confidential on the grounds of breach of contract by the submitting party. Applicant's contract with a third party does not provide sufficient justification for designating the records as confidential pursuant to CCR section 2505.

Based on the foregoing reasons, Applicant's application is denied for failure to state a reasonable claim that some provision of law authorizes the Commission to keep the strategy and plans to secure ERCs confidential. Should you feel that you have additional information that could support your claim of confidentiality, please submit a new application, following the procedures set forth in CCR, section 2505. Alternatively, the procedures and criteria for appealing any part of this decision are also set forth in CCR, section 2505. Be advised that an appeal of this decision must be filed within fourteen days from my decision. If you have any questions concerning this matter, please contact Deborah Dyer, Senior Staff Counsel, at (916) 654-3870.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melissa Jones', with a large, stylized loop at the end.

MELISSA JONES
Executive Director

cc: Docket Unit
Dick Ratliff, Legal Office